

HIGH COURT OF SIKKIM
Record of Proceedings through Video Conferencing

WP(C) No. 21/2019

MUNNI DEVI & ORS.

PETITIONER (S)

VERSUS

DUL DUL PRASAD & ORS.

RESPONDENT (S)

For Petitioners : Mr. Nayan Nepal, Advocate

For Respondents : Mr. J.B. Pradhan, Sr. Advocate
Mr. D.K. Siwakoti, Advocate
Ms. Prarthana Ghataney, Advocate
Ms. Ranjeeta Kumar, Advocate**Date: 02/07/2021****CORAM :****HON'BLE MR. JUSTICE JITENDRA KUMAR MAHESHWARI, CJ.**

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1. Assailing the undated Award passed by the Lok Adalat though signed on 26.06.2015, this petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India.

2. The case of the petitioner in nutshell is that petitioner no.1 is a wife of the Defendant no.1 in the suit and petitioner no.2 and 3 are his sons. It is their grievance that they are deserted by defendant no.1 and the suit property in which they are residing has been partitioned without joining, noticing them and affording opportunity in violation of the principle of natural justice.

3. It is contended that as per the allegations made, the suit, the property in question belongs to Late Kashi Nath Prasad, who died in the year 1996-97 leaving behind six sons namely 1. DulDul Prasad, 2. Pradeep Prasad, 3. Shiv Shankar Prasad (died in 2003-04), 4. Sunil Prasad, unmarried, died in March, 1997, 5. Dilip Prasad and 6. Anil Prasad. As pleaded after the death of Kashi Nath Prasad the suit property was recorded in the name of the plaintiff and defendants only and the partition thereof was sought for in the suit. In the said partition suit, a compromise deed dated 22.06.2015 was filed and the respondents only have entered into the compromise partitioning the entire property by collusion and fraud, which was originally belong to Late Kashi Nath Prasad. However, suit of partition filed by the plaintiff/respondent no.4, Anil

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Prasad, has been decreed. Various other allegations have been alleged, *inter alia*, contending that the construction was raised by her and she is residing in the said premises, however, to oust her, the said suit and compromise was entered into. In view of the foregoing facts, it is urged that without joining the proper parties and adjudicating the issues involved in the facts of the case, a decree has been obtained by virtue of the impugned settlement of the Lok Adalat Award which may be set aside.

4. On the question of maintainability of the petition reliance has been placed on the judgment of Hon'ble the Supreme Court passed on 07.09.2017 in Civil appeal no.11345/2017 (***Bhargavi constructions & Anr. vs. Kothakapu Murthyam Reddy & Ors.***) relying upon the judgment of Hon'ble Apex Court in the case of ***State of Punjab and Anr. vs. Jalour Singh & Ors.*** reported in ***(2008) 2 SCC 660***. On the basis of the said judgments it is urged that the petition under Articles 226 and/or 227 of the Constitution of India is maintainable.

5. On the other hand, learned Senior Counsel representing the respondent nos.1 to 4 has referred various paragraphs of the writ petition and relief clause to submit that the Writ in the nature of mandamus/certiorari against private party is not maintainable. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil*** reported in ***(2010) 8 SCC 329*** to contend that even within the purview of the Article 227 the power of the Court must be exercised sparingly as specified in paragraphs 49 of the said judgment which is not a case at hand in the facts. Reliance has been further placed on a judgment of the Hon'ble Apex Court in the case of ***Radhey Shyam & Anr. vs. Chabbi Nath & Ors.*** reported in ***(2015) 5 SCC 423*** determining the scope of Articles 226 and 227 of Constitution of India, clearly spelt out that the scope of Article 226 is different from the scope of Article 227 of the Constitution of India and by joining

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the private party until public duties they are discharging the Writ cannot be entertained.

6. In addition to the aforesaid facts it is urged that the suit was filed merely to partition of the property which is recorded in the joint name, however, in such a case the claim of the petitioner is through defendant no.1, which is clearly protected by virtue of settlement arrived between the parties of the suit. The Award of the Lok Adalat do not warrant any interference in this petition, therefore, maintaining the Award, the Writ Petition may be dismissed.

7. After having heard learned Counsel appearing for the parties and in view of the clear pronouncement on the issue involved in the present case squarely decided by the judgment of the **Bhargavi Constructions** (supra) and **Jalour Singh** (supra) the petition under Articles 226 and/or 227 of Constitution of India challenging the Award of the Lok Adalat is tenable. Hon'ble Apex Court in the case of **Jalour Singh** (supra) in paragraph 12 observed as thus:

"12. It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits."

8. The said judgment has been followed in the case of **Bhargavi Constructions** (supra), therefore, there is no cable of doubt that the Award of the Lok Adalat can be assailed by way of petition under Articles 226 and/or 227 of the Constitution of India.

9. The judgment relied upon by the learned Senior Counsel are not in the context of the challenging the Award passed by the Lok Adalat and answering the said question. It is with respect to the maintainability of the petition under Article 226 of the Constitution of India in the context of Article 12

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of the Constitution of India and the scope of the power under Articles 226 and/or 227 of the High Courts. Therefore, the judgments relied by the learned Senior Counsel for the respondents are the easily distinguishable looking to the fact that the judgment of ***Bhargavi Constructions*** (Supra) and ***Jalour Singh*** (supra) squarely decide the issue of the maintainability as involved in the present case. Therefore, the argument of non-maintainability of the petition as advanced by the learned Senior Counsel is hereby repelled. The contention referring the petition regarding issuance of the Writ of mandamus and certiorari can be ignored with a view point that such Writ cannot be issued looking to the fact of the present case where the Award of the Lok Adalat has been assailed.

10. Reverting back on the merit of the issue as per the pleadings of the suit in paragraph 2 it is clear that Late Kashi Nath Prasad who was the father of the plaintiff and defendants was allotted a piece of land at Mandi Bazaar, Rangpo, East Sikkim by the Urban Development and Housing Department, Government of Sikkim. In paragraph 3 it is stated that on death of Kashi Nath Prasad it was transferred in the name of the plaintiff and the defendant by document dated 30.06.1999 and later on the Lease Deed was registered in 2004 as pleaded in paragraph 4. It is said that the plaintiff constructed the house of 5 ½ storied RCC building and the said property has been shown as Scheduled property in the suit to which a partition was sought for.

11. On the other hand, the petitioners before this Court have contended that late Kashi Nath Prasad was not survived only by four sons but he was survived by six sons. One son died without marrying and the other son Shiva Shankar Prasad is having legal heirs. If the property was of late Kashi Nath Prasad as stated Shiva Shankar Prasad as stated by the plaintiffs at paragraph 2 then such a situation the suit for partition, if any, filed by only four persons whose names have been subsequently recorded which was decreed by the Lok Adalat without noticing the other cannot be sustained in the law. In addition to the aforesaid the petitioners contend that they are legally wedded wife and sons

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of defendant no. 1, who have been deserted by the defendant no.1, though they are residing and in possession of the house in question. They have also taken the plea that the said construction has been raised by them. However, in such a situation the issue has to be decided by the Court in a partition suit joining them though they are claiming through defendant no.1.

12. In that view of the matter in place of accepting the plea that the compromise by virtue of collusion and fraud and the Award so passed in the same fashion; but in view of the observation so made it is suffice to observe the Award so passed by the Lok Adalat in view of the pleadings of the suit without joining all the parties and without affording an opportunity is not proper. In such a situation, Writ Petition under Articles 226 and/or 227 of the Constitution of India is maintainable. The Award so passed by the Lok Adalat in the given fact is liable to be set aside.

13. Accordingly, this Writ Petition is allowed, the Award passed by the Lok Adalat stands set aside. The suit be restored to its original file and it would be decided by the Court in accordance with law joining the petitioners as a party and taking all particulars that how many legal heirs are of Kashi Nath Prasad there, to which the partition of the property of Kashi Nath Prasad as pleaded and prayed. It is made clear here that this Court has not expressed any opinion on the merit of the case and the petition has been decided with foregoing observations, however, the Trial Court shall decide the suit in accordance with law affording opportunities to all the parties without influencing with any of the observation, if any, on merit of the case.

14. In the facts of the case, the parties to bear their own cost.

Chief Justice